EXHIBIT 123

Excerpts of the Deposition of Michael Mersch

333 UNITED STATES DISTRICT COURT DISTRICT OF NEVADA CUNG LE; NATHAN QUARRY, JON FITCH, on behalf of themselves and all others similarly situated, Plaintiffs, Case No. vs. 2:15-cv-01045-RFB-(PAL) ZUFFA, LLC, d/b/a Ultimate Fighting Championship and UFC, Defendant. CONFIDENTIAL VIDEOTAPED DEPOSITION OF MICHAEL P. MERSCH AFTERNOON AND EVENING SESSIONS (PAGES 333 to 496) LAS VEGAS, NEVADA JULY 14, 2017 4:43 p.m. Reported by:

Jualitta Stewart, CCR No. 807, RPR Job No. 51253-B

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negotiated meeting of the minds on a new agreement, then the terms of the -- any previously negotiated agreements would be folded into or superseded by the new agreement, you know, to the best of my knowledge.

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Q. And you used the term "almost certainly" in this context, "we will almost certainly begin negotiations on a new agreement." Because, again, as we've seen from other documents and vou've testified earlier it was Zuffa's practice to renegotiate with fighters that had wanted to continue having a contractual relationship with before the end of their contractual term; is that right?

A. The -- I think the language that I use there was almost because that would certainly be our hope that we would be able to come to and negotiate a mutually agreeable contract that the fighter was comfortable with, that we were comfortable with, and that was mutually beneficial. Obviously we can't guarantee that and, again, I have no independent recollection of the context or other things that were going on at this time, but that would be my guess as to what I -- what I meant by using that language.

levels of compensation which is, of course, was an 1 appealing factor to any fighter.

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But, you know, whether -- you know, there could be any number of factors that each fighter may have felt that worked to their benefit in giving them the position where they would come to Joe Silva or Dana or Lorenzo or myself or any number of people and say, you know, I believe now based on the body of work that I've delivered that, you know, we feel that it's appropriate to enter into a new contract. And oftentimes Zuffa was amenable to that as well because they felt that it was a mutually beneficial decision that benefitted both the company and the fighter.

Q. So what you're testifying to is that Zuffa, it was in Zuffa's interest to enhance the compensation of certain fighters in exchange for the fighters agreeing to another three or four fight deal, correct?

A. It was a negotiated point. Compensation, of course, is a negotiated point in virtually every contract that I'm aware of or monetary -- you know, the amount of money involved in any contract is, of course, an important point. But that would have been amongst any number of other, you know,

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important provisions in the contract that may or may

Q. And that was especially true for top stars like Quinton Rampage Jackson, that Zuffa wanted to make sure that Zuffa had business certainty with regard to its top stars so it would attempt to renegotiate its top fighters' contracts

before the end of their term, correct? A. Again, I think that that is a term that may be applicable to -- first of all, I don't know how you would define, you know, what was a top star or, you know, that's a fairly amorphous term. But I think the term really applies to any fighter where a meeting of the minds could be had between the fighter and the company out of mutual desire to extend the terms or to supply out the terms of an existing deal with a more preferential deal.

Q. Zuffa wanted to ensure that the fighters that it wanted to maintain in its fold never got to the end of the terms of their contracts, correct?

A. Well, frankly, it wasn't -- it wasn't just Zuffa. Oftentimes the fighter himself would call and request that -- that they receive a new contract prior to the end of the term of an agreement because invariably -- well, maybe not invariably. Oftentimes, the new contract that they would receive would have enhanced and increased 2 not have been renegotiated between the parties. 3

Again, depending on what was important, depending on 4

the -- all the various factors that could go into any individual negotiation with any individual fighter.

7 Q. So Zuffa comes to a fighter on the 8 third -- between the third and fourth fights of a four-fight deal and says all right, you can fight 10 your fourth fight at "X" dollars or you can sign 11 this new deal, new four-fight deal at "X" plus "Y" 12 dollars, the fighter then has an option to cancel 13 the old contract and sign a new contract and make 14 more money for that next fight; is that right?

> A. There could be circumstances that go both ways where Zuffa may present an offer to the fighter or the fighter may come to Zuffa and present a proposal to the UFC that it hopes the UFC will take into consideration. And sometimes the parties were able to come to a meeting of the minds after independent evaluation and sometimes they weren't.

But the -- there was, you know, an ebb and flow that went both directions and oftentimes the driving force behind renegotiation or request for a sub -- a superseding agreement came from the

8 (Pages 358 to 361)

362 364 fighter's side and sometimes it came from the Zuffa meeting of the minds was reached between the parties 1 2 side. It just depended on the context, it depended and he elected to move on. 2 3 3 on, you know, a variety of different factors. Q. He elected to fight his last fight, is 4 MR. CRAMER: All right. I'd like to have 4 that right, on the contract and not --5 the court reporter mark as Mersch Exhibit 25 the 5 A. That's --6 next document. 6 Q. -- sign a new deal? 7 7 For the record. Mersch Exhibit 25 is a As I testified, that's what the e-mail 8 series of e-mails with a Bates range ZFL 2496215 8 reads. 9 through 6216. It's a July 2012 e-mail exchange 9 Q. So then Ms. Long, if you read up, says, 10 between Mr. Mersch, Tracy Long, and Joe Silva. 10 "Need to know if this will be the main event. 11 Jackson gets Pay-Per-View at main event. Last fight (Whereupon, Exhibit 25 was 11 12 marked for identification.) 12 on the card." 13 13 BY MR. CRAMER: Do you see that? 14 Q. Let me know when you've had a chance to 14 A. I do. 15 15 review it, and I have some questions about it. Q. And then you say, "Pretty sure it is, but 16 16 confirm with Joe." A. Okay. 17 17 Right? That's what you said? Q. So turn to the bottom of the first page. 18 18 Ms. Long writes an e-mail that says, "This is A. That's what it says on this piece of 19 Rampage's last fight." 19 paper. 20 Do you see that? 20 Q. And then Silva says, "Not the main 21 21 event." A. I do. 22 22 Q. And you respond -- then Mr. Silva says, Correct? 23 23 "Send him a six-month extension." A. That's what it says on this piece of 24 Ms. Long says, "He's going to fight his 24 paper. 25 last fight." And you respond yes. 25 Q. So Mr. Silva wanted to ensure that 363 365 Jackson, who was fighting his last fight, was not 1 Is that right? I'm just reading up the 2 2 e-mail chain. the main event, right? 3 Did I read that correctly? 3 A. You would have --4 A. It looks like -- if you say so. I don't 4 MR. WILLIAMS: Object to the form of the 5 have any independent recollection of this e-mail 5 question. 6 THE WITNESS: You would have to talk to 6 chain or exchange, but I don't doubt that -- I don't 7 dispute that it may have occurred. 7 Mr Silva 8 Q. Well, it was sent from your e-mail 8 BY MR. CRAMER: 9 9 Q. And as a result of his last fight being address, correct? 10 10 not the main event, he didn't get Pay-Per-View A. As I said, I don't have any independent 11 recollection, but I don't dispute that it occurred. 11 dollars under his contract, correct? 12 Q. Okay. 12 A. Again, you would have to talk to 13 13 Mr. Silva. I don't have -- and I don't have the A. So. 14 Q. So it's fair to say Rampage -- Quinton 14 particulars of his contract in front of me. 15 Rampage Jackson was going to fight his last fight, 15 Ms. Long makes a reference to that but whether 16 and he had not agreed, at least at that point, to 16 that's accurate or not, I have no individual or 17 17 sign a new contract with the UFC; is that right? independent knowledge related to that. 18 18 Q. So as a result of Rampage refusing to A. Again, I don't have any independent 19 19 sign his new contract with Zuffa, Zuffa punishes him recollection. I wouldn't know, but I suppose that's 20 the inference that can be drawn from reading that 20 by making sure that his last fight is not a main 21 e-mail chain. 21 event and therefore he does not get Pay-Per View 22 22 Q. Okay. He rejected Zuffa's offers to dollars; is that right? 23 23 MR. WILLIAMS: Object to the form of the renegotiate a new contract? 24 A. I don't know that there were any 24 question. 25 25 negotiations, but if there were, apparently no ///

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1	it was expressed to me that anybody in the UFC's	1	e-mail here, the subject is "Affliction," right?
2	executive team had any felt that the individuals	2	A. Yeah.
3	running the Affliction brand of MMA were a threat to	3	Q. That's the subject?
4	the UFC. I don't recall that. And, again, it was	4	A. Yes.
5	ten years ago, apparently. But as I sit here today,	5	Q. And Affliction is the company we've just
6	I don't have any independent recollection that that	6	been talking about that was exclusively an apparel
7	occurred.	7	company but then at some point in late 2007 or two
8	Q. Did you, at some point, gain the	8	thousand and or early 2008 became an MMA
9	understanding that either you or someone at Zuffa	9	promotion, correct? That's Affliction, correct?
10	viewed Affliction at this time as Zuffa's main	10	A. I'm sorry, can you repeat that, I
11	rival?	11	apologize.
12	A. I never gained that understanding.	12	Q. That's okay.
13	MR. CRAMER: All right. I'd like to mark	13	Affliction is the company that we've just
14	as Mersch Exhibit 39 the next document.	14	been talking about
15	(Whereupon, Exhibit 39 was	15	A. Yes.
16	marked for identification.)	16	Q in the last document
17	THE WITNESS: To the best of my	17	A. Correct.
18	recollection. So.	18	Q that in late 2007 went from being
19	BY MR. CRAMER:	19	exclusively an apparel company to an apparel company
20	Q. Mersch Exhibit 39 is a one-page series of	20	plus an MMA promotion, right?
21	e-mails bearing the Bates Number ZFL-2193553. It's	21	A. Correct.
22	a July 24 and 25, 2009 e-mail chain between	22	Q. And you say to Mulvey and Ricca in July
23	Mr. Mersch and Kevin Mulvey with a subject	23	of 2009, "Our main rival is done."
24	"Affliction."	24	Do you see that?
25	Let me know when you've completed	25	A. H'm-h'm.
	443		445
1	reviewing it.	1	Q. And you
2	A. Okay.	2	A. Yes.
3	Q. So at the bottom of the chain, there's an	3	Q. You include a website news article from
4	e-mail from you to Mr. Mulvey and Joe Ricca.	4	Sherdog.com. Sherdog.com is an MMA website; isn't
5	A. Ricca.	5	that right?
6	Q. Ricca. Who is Mr. Mulvey?	6	A. Correct.
7	A. Mr. Mulvey and Mr. Ricca worked for a	7	Q. And there's a news item entitled,
8	government relations firm out of Boston,	8	"Affliction Clothing Back in UFC Fold."
9	Massachusetts called Dewey Square Group.	9	Do you see that?
10	Q. And they were doing business for Zuffa at	10	A. Yes, sir.
11	the time?	11	Q. And the Affliction clothing was back in
12	A. At again, to the best of my	12	the UFC fold because Affliction had stopped the MMA
13	recollection timing-wise, I'm not a hundred percent	13	promotion business, correct?
14	sure, but it wouldn't surprise me if during this	14	A. I would assume that that was one of the
15	time and for many many years, I worked with	15	factors, I don't recall all of the details
16	Mr. Mulvey and Mr. Ricca to bring MMA legalization	16	surrounding why what what negotiations took
17	to the state of Massachusetts which prior to this	17	place between either Dana, Lorenzo, and and
18	time only permitted boxing and did not permit the	18	and the people that ran Affliction. But obviously
19	promotion of live professional mixed martial arts	19	it appears that without reading the article, it
20	sporting events.	20	appears that at some point that that was agreed to.
21	Q. So Dewey Square was essentially a	21	Q. And when you said "our main rival is
22	lobbyist for Zuffa and the UFC at this time,	22	done," you were referring to Affliction as an MMA
23	correct?	23	promotion no longer being an MMA promotion, correct?
24	A. Correct.Q. Okay. And you were at the first	24 25	A. I spoke with Mr. Mulvey and Mr. Ricca on a fairly regular basis in the much of what I was
25	Q. Okay. And you were at the first		

29 (Pages 442 to 445)

446 448 1 doing there was keeping them abreast of current their MMA promotion, looks like the UFC is now going 2 2 events related to the company to make sure that they to be able to take all of Affliction's fighters, 3 3 understood, you know, the business interest of the right? 4 company that were going on and any major 4 A. Well, apparently, again, I don't have any 5 developments that had happened. 5 independent recollection regarding what was 6 And, again, I may have been referring to 6 happening at this particular time, but apparently 7 that but, again, I certainly can appreciate what the inference that I would draw from reading this 8 8 e-mail would be that the UFC had entered into an context or other circumstances existed at that time 9 or what I may have been speaking with them about in 9 agreement to purchase some or all of the assets of 10 10 Affliction's MMA-related assets. referring to them in that -- in that -- that regard. 11 11 But again, I think the general nature of Q. And then you say, "The primary reason is 12 12 my e-mail was to pass along that the relationship to make it easier for us to sign Fedor, the crazy --13 between Affliction and the UFC had apparently been 13 crazy Russian heavyweight so we can match him 14 14 against Randy and Brock. repaired. 15 15 Q. Affliction didn't go out of business, Do you see that? 16 16 A. I do. correct? 17 MR. WILLIAMS: Objection to the form of 17 O. Fedor was Fedor Emelianenko? 18 18 I'm sure it was. question. 19 THE WITNESS: I have no knowledge -- not 19 O. And Fedor Emelianenko was with 20 20 to the best of my knowledge. Affliction? 21 BY MR. CRAMER: 21 A. I would infer that from -- from the 22 22 context of the e-mail. I don't -- at that time, I Q. They continued to be an apparel company, 23 23 correct? wouldn't know who he was officially, you know, 24 24 contracted to, but one could infer that. A. To the best of my knowledge. 25 25 Q. Right? Now they were back in the UFC Q. And Randy and Brock were two UFC 447 449 fold, that's what the article reports, correct? heavyweight fighters, correct? 1 1 2 A. As of the date of this e-mail, that would 2 A. Yes. Randy Couture, I believe that would 3 be -- I would believe that would be accurate. 3 refer to and Brock Lesnar. 4 Q. So when you're saying our main rival is 4 Q. And you say a little bit further down, 5 "Things are looking good. This was a big day for done, your mean -- you mean that Affliction was no 5 longer an MMA promotion, it's just a clothing 6 the UFC." 6 7 7 company, right? Do you see that? 8 A. I think that I would have -- I would 8 A. I do see that. 9 characterize it as Affliction elected to stop 9 Q. And it was a big day for the UFC because 10 10 promoting the sport of mixed martial arts and they their main rival was out of the UFC promotion 11 negotiated whatever they may have negotiated with 11 business and the UFC could get most of their 12 either Dana White or Lorenza Fertitta to engender 12 fighters, correct? 13 themselves back into being a brand that they were 13 A. Honestly, I don't under -- I couldn't 14 comfortable with sponsoring within the UFC 14 possibly understand or tell you what my motivation 15 15 ecosphere. was for opining that that particular day which was 16 Q. And this -- you viewed this as great news 16 July 25th of 2009, eight years ago, why that was 17 17 for the UFC, right? That Mulvey says to you, Wow, big today or what my -- what -- you know, 18 18 short-term, long-term ramifications." conclusions or what, you know, information went into 19 And you say, "Any ramifications are good 19 my making that, you know, giving that opinion. 20 for us. We're going to get most of their fighters. 20 But, you know, certainly the fact that 21 21 They only have 22 fighters." the UFC was able to negotiate a, you know, an asset 22 22 Do you see that? purchase agreement for some of the assets of 23 A. I do. 23 Affliction's MMA business, apparently at that time I

30 (Pages 446 to 449)

thought that that was, in my opinion, good -- good

for the overall health of the company. Because it

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O. So as a result of Dana and Lorenzo

negotiating with Affliction to have Affliction drop

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1	A. 1220 South Commerce Street, Suite 120,	1	
2	Las Vegas, Nevada 89102.	2	STATE OF)
3	Q. What's the name of the company that you	3) :88
4	work for?	4	COUNTY OF)
5	A. One of the companies that I provide	5	
6	consulting and business services for at that address	6	
7	is called well, there are a multitude of	7	I, MICHAEL P. MERSCH, the witness
8	companies, there's a variety, but they're	8	herein, having read the foregoing
9	generically referred to collectively as the Focus	9	testimony of the pages of this deposition,
10	Companies.	10	do hereby certify it to be a true and
11	Q. And the Focus Companies are located at	11	correct transcript, subject to the
12	the address you just gave?	12	correct transcript, subject to the corrections, if any, shown on the attached
13	A. That's correct.	13	
14	Q. And what is the general business purpose	14	page.
15	of the Focus Companies?	15	
	A. There's a variety of business purposes	16	MICHAEL D MEDCOLL
16 17	for the companies. There's about 40 of them that, I	17	MICHAEL P. MERSCH
18	think, are registered at that address that cover a	18	
19	variety of different businesses.	19	0 1 1 1 1 1 0
20	Q. Are you an employee or an independent	20	Sworn and subscribed to before
21	contractor?	21	me, this day of
22	A. I am an employee for some for one of	22	, 2017.
23	the companies.	23	
24	- •	24	
25	others?	25	Notary Public
	491		493
1	A. I'm an independent contractor for a	1	REPORTER'S DECLARATION
2	number of people, correct.	2	STATE OF NEVADA)
3	MR. CRAMER: All right. That's all the) ss
4	questions I have. Thank you.	3	COUNTY OF CLARK)
5	THE VIDEOGRAPHER: Questions?	4	
6	MR. CRAMER. No questions.	5	I, Jualitta Stewart, a duly commissioned
7	THE VIDEOGRAPHER: This concludes today's	6	Notary Public, Clark County, State of Nevada, do
8	deposition of Michael Mersch. Total number of media	7	hereby certify:
9	used is seven.	8	That I reported the taking of the
10	We are off the record at 8:27 p.m.	9	deposition of the witness, MICHAEL P. MERSCH,
11	(Thereupon, the taking of the deposition	10	commencing on Friday, July 14, 2017, at the hour of
12	concluded at 8:27 p.m.)	11	4:43 p.m.
13	• ′	12	That prior to being examined, the witness
14		13	was by me duly sworn to testify to the truth, the
15		14	whole truth, and nothing but the truth.
16		15	That I thereafter transcribed my said
17		16 17	shorthand notes into typewriting and that the
18		18	typewritten transcript of said deposition is a complete, true, and accurate transcription of said
19		19	shorthand notes taken down at said time.
20		20	I further certify that I am not a
21		21	relative or employee of any party involved in said
22		22	action, nor a person financially interested in the
23		23	action, not a person imanciany interested in the action.
24		24	IN WITNESS WHEREOF, I have hereunto set
25		25	my hand and affixed my official seal in my office in

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MICHAEL P. MERSCH - CONFIDENTIAL

	494				496
1	the County of Clark, State of Nevada, this 1st day		1	ERRATA	
2	of August, 2017.		2		
3		:	3		
4		١.	4		
	JUALITTA STEWART, RPR, CCR No. 807	!	5	I wish to make the following changes,	
5		(6	for the following reasons:	
6		-	7	<u> </u>	
7		;	8	PAGE LINE	
8		!	9	CHANGE:	
9		1	0	REASON:	
10		1:	1	CHANGE:	
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12 13		1:	3	CHANGE:	
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17		1'	7	CHANGE:	
18		18	8	REASON:	
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23		2:	3	WITNESS' SIGNATURE DATE	
24		24	4		
25		2!	5		
	495				
1	INSTRUCTIONS TO WITNESS				
2					
3	Please read your deposition over carefully				
4	and make any necessary corrections. You should state				
5	the reason in the appropriate space on the errata				
6	sheet for any corrections that are made.				
7	After doing so, please sign the errata sheet				
8	and date it.				
9	You are signing same subject to the changes				
10	you have noted on the errata sheet, which will be				
11	attached to your deposition.				
12	It is imperative that you return the original				
13	errata sheet to the deposing attorney within thirty				
14	(30) days of receipt of the deposition transcript by				
15	you. If you fail to do so, the deposition transcript				
16	may be deemed to be accurate and may be used in court.				
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